

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 195 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

STATE OF GUJARAT

Versus

PATHAN ANU @ HANIF RASHID

Appearance:

M.A.BUKHARI, ADDL. PUBLIC PROSECUTOR for Petitioner
MR KB ANANDJIWALA for Respondent No. 1

CORAM : MR.JUSTICE D.G.KARIA
Date of decision: 25/06/96

ORAL JUDGEMENT

This acquittal appeal is directed against the judgment and order dated December 29, 1988 whereby the learned Chief Judicial Magistrate, Bhavnagar, ordered to acquit the respondent-accused for the offence under section 326 of the Indian Penal Code.

P.W.2, Sobharam Asandas is the injured-complainant who lodged the complaint Exh.9 on April 25,1985.According to the case of the prosecution, the complainant has been dealing in mutton. At about 2.30 p.m. on April 25, 1985, the accused-respondent had come to his hand-cart wherein he was selling mutton and he had purchased half a plate of mutton and two slices of bread. He consumed the same. Thereafter, the complainant demanded money for the same. The accused told the complainant that he would pay the amount in the evening. The complainant insisted for the money. The accused thereupon abused him and gave knife-blow on the left side of the stomach of the complainant. The accused was thus charge-sheeted for the offence under section 326 of the Indian Penal Code.

The respondent-accused pleaded not guilty.

The learned Chief Judicial Magistrate, Bhavnagar, having recorded the evidence of the prosecution-witnesses and on appreciating the same and considering the other material on record, acquitted the respondent-accused for the offence with which he was charged, as aforesaid.

Mr.M.A. Bukhari, learned Addl. Public Prosecutor appearing for the appellant-State, contends that the impugned order of acquittal is bad in law, inasmuch as the prosecution-case is proved by the evidence of the complainant, Sobharam Asandas, and P.W.1, Bharat Pranshankar Dholakia, who medically examined the complainant and issued the Medical Certificate at Exh.7.

I have gone through the relevant evidence and material on record. P.W.2, Sobharam Asandas, has deposed at Exh.8 that the respondent-accused had given him knife blows on the stomach and chest parts of his body when he demanded the price for the mutton etc. which the accused had consumed. He has further deposed that nobody was present at the time of the incident. He lodged the complaint Exh.9. Considering the contents of complaint Exh.9, the evidence of the complainant is contrary to the complaint, inasmuch as it is alleged in the complaint that at the time of incident,Sindhi Dharmu and Koli Savji Nanji and Rajendra Gangaram and several others had come there.

P.W.3, Bhima Nagurao, has not supported the

prosecution case. He has deposed that he did not know as to who had given knife-blow to the complainant. He had not seen the assailant. He did not inquire from the complainant as to who had given the knife-blows. He was declared hostile.

Similarly, P.W.4, Dharamdas Rajamal Sindhi, has also not supported the prosecution case and was declared hostile.

On going through the evidence of P.W.1, Dr. Dholakia and the P.W.2, the complainant, there are material contradictions in the evidence of both these witnesses. The complainant deposed that the accused gave knife-blows on the vital parts of his body, i.e. on stomach and chest parts, whereas the Doctor has deposed contrary to it, stating that there was incised wound over left hypochondrium just below the costal margin at the level of mid-clavicular line, oblique 1" x 1/2", cavity deep with part of omentum projecting out. He further deposed that the complainant had incised wound over left loin 2" above the left iliac crest. According to Dr. Dholakia, the complainant was admitted in the hospital on 25.4.1985 and was discharged on 11.5.1985. The complainant-victim was admitted in the hospital for about 17 days on account of the injuries sustained by him. Dr. Dholakia opined that the injury would have been caused by sharp cutting object and the recovery period would be 10 to 15 days in the absence of any complication arising therefrom. Dr. Dholakia issued the certificate which is at Exh.7 on the record. Thus, the learned Magistrate has rightly observed that there are contradictions in respect of the injuries as are received by the complainant and certified by Dr. Dholakia as per the Certificate at Exh.7.

Medical evidence does not disclose any serious injury on any vital part of the complainant. There is no permanent privation of either eye or ear or any joint nor the hurt caused to the complainant would endanger life or that the complainant was required to remain in hospital for 20 days on account of any severe bodily pain or unable to follow his ordinary pursuits. The learned Magistrate has, therefore, rightly concluded that the offence alleged against the accused-respondent has not been brought home. Investigating Officer has also not been examined, nor Panchnama of scene of occurrence is produced on record. It is, therefore, not clear as to

how the incident had taken place.

In the above view of the matter, there is no substance in the appeal. It fails, and is dismissed.
